Fair Political Practices Commission
Memorandum

To: Chairman Randolph and Commissioners Blair, Downey, Huguenin and Remy

From: John W. Wallace, Assistant General Counsel
Luisa Menchaca, General Counsel

Subject: Approval of 2007 Regulatory Priorities

Date: September 27, 2006

A. INTRODUCTION AND METHODOLOGY

This memorandum outlines staff's recommendations for the Commission's regulatory priorities in Calendar Year 2007. (See attachment 1.) Regulatory ideas were solicited from staff in all of the divisions. In addition, staff investigated regulatory proposals that were considered in the past but due to workload were not pursued.[1] Once the proposals were collected, staff provided the list to executive staff for their review and guidance.

This memorandum contains those items that the executive staff believes are most urgent and would be manageable in light of the current fiscal and staff constraints.[2] Staff is also mindful of the fact that the Commission has already committed to several projects that were started in 2006 and will continue into 2007, both regulatory and other.[3] Staff requests that the Commission approve or disapprove the recommendations. Staff will return in December with a final version.

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[1] Section 11426 of the 1974 Administrative Procedures Act also allows interested persons to petition the Commission requesting the adoption, amendment or repeal of a regulation under certain circumstances.

[2] As in prior years, the rulemaking plan will also allow for quarterly review and revision and will attempt to spread the workload as evenly as possible throughout the year.

[3] Proposition 89, entitled Political Campaigns. Public Financing. Corporate Tax Increase. Campaign Contribution and Expenditure Limits, has been placed on the November 2006 ballot. Proposition 89 would repeal most of Proposition 34 and replace it with a new publicly financed set of contribution limits. Because, adoption of Proposition 89 by the voters will substantially change the statutory law in the Act, it will also substantially change the regulatory priorities of the agency. Therefore, should the proposition be enacted, staff may be required to discard the proposed regulation calendar and replace it with one that emphasizes construction of Proposition 89.

B. STATUTES POSSIBLY NEEDING REGULATORY INTERPRETATION IN 2007[4]

- **AB 1759 Umberg Campaign Expenditures Disclosures:** This bill would require committees other than primarily formed committees to disclose contributions or independent expenditures totaling $5,000 or more to support or oppose the qualification or passage of a single state ballot measure within 10 business days of making the contribution or independent expenditure. The contents of this bill are almost identical to AB 938 (Umberg), which passed both houses and was vetoed by the Governor. However, AB 1759 appears to address the Governor's veto message by lowering the threshold of $10,000 (as it appeared in AB 938) to $5,000 as it currently reads in AB 1759. (Stats. 2006, Ch. 438.)

- **AB 2275 Umberg Political Reform Act of 1974: telephone advocacy:** This bill requires candidates, committees, and slate mailer organizations that use campaign funds to make 500 or more phone calls in support or opposition of candidates or ballot measures to disclose the name of the organization that authorized or paid for the call, unless the calls are personally made by the candidate, campaign manager, or volunteers. The bill also requires organizations to keep a script or a copy of the recorded phone call for a period of time per section 18401 of the California Code of Regulations. The bill also prohibits committees from contracting with phone bank vendors who do not conform to these disclosure requirements. (Stats. 2006, Ch. 439.)

- **SB 145 Murray Political Reform Act of 1974: Contributions:** This bill would authorize an elected state officer to accept contributions after the date of the election to the office presently held for the purpose of paying expenses associated with holding office or for any other purpose authorized by the Political Reform Act of 1974, subject to certain limitations. The bill would set limits on the amount of contributions that may be made to an elected state officer in a calendar year and on the aggregate amount of contributions that a state officer may receive in a calendar year. (Stats. 2006, Ch. 624, urgency.)

  Recommendation: This bill is an urgency bill and therefore is currently in effect. Staff is proposing adoption of emergency regulations in November and final adoption tentatively set for the February Commission meeting to address various issues raised by the bill. (See attachment 2.)

- **SB 1579 Political Reform Act of 1974: disclosures**: The Act requires a candidate to deposit all campaign contributions into a campaign account, and provides that

[4] The final version of the calendar will reflect statutes signed into law by the Governor that may require regulatory action.

contributions deposited into the campaign account shall be deemed to be held in trust for expenses associated with the election of the candidate or for expenses associated with holding office. The Act generally provides that an expenditure to seek office is within the lawful execution of that trust if it is reasonably related to a political purpose, an expenditure associated with holding office is within the lawful execution of the trust if it is reasonably related to a legislative or governmental purpose, and expenditures that confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose. The Act provides more specific guidance relating to certain types of expenditures, including expenditures related to travel expenses, and the reporting of those expenditures. This bill would correct an erroneous cross-reference in these provisions. This bill contains other related provisions and other existing laws. (Stats. 2006, Ch. 155.)

C. CONTINUING PROJECTS
(Carried over from 2006)

1. Section 82015: Cosponsored Payments: Section 82015(a) of the Act defines a "contribution" as "a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes." Section 82015(b)(2) provides that a payment made at the behest of a candidate by a third party is a contribution to the candidate *unless* (among other exceptions) the payment is made principally for legislative, governmental, or charitable purposes. These payments are considered payments made for cosponsored events. However, these "cosponsored" payments must be reported within 30 days following the date on which the payment or payments equal or exceed $5,000 in the aggregate from the same source in the same calendar year in which they are made.

Staff proposes to draft a form for reporting co-sponsored payments under section 82015(b)(2)(B)(iii). A regulation may be needed to specify the reporting requirements. Currently, the statute requires disclosure of every payment made by the co-sponsor once the $5,000 threshold is met.

Recommendation: This item is currently set for prenotice discussion in November 2006 and adoption in February 2007.

2. Advertising Disclosure Cluster: A primarily formed ballot measure committee must disclose its two highest donors. A variety of issues have arisen regarding the construction of these provisions. Staff proposes regulatory action to refine these provisions of the Act.

However, due to the qualification of the "Truth in Initiatives Act of 2006," for the November ballot, staff had deferred action on this project. The initiative required the legislative analyst to prepare statements describing the principal financial support for and against each ballot measure, using the North American Industry Classification System

(NAICS). It would also require disclosure statements to appear on ballots, sample ballots, ballot pamphlets, designated web sites, *and in advertisements for and against ballot measures*. In addition, it would permit legal challenges to the described disclosure statements within two to five days of issuance by the Legislative Analyst. The "Truth in Initiatives Act" has since been withdrawn by the proponents and is no longer an impediment to Commission action.

Recommendation: This item is currently set for prenotice discussion in December 2006. It is recommended that this item be set for prenotice discussion in April 2007 and adoption in June 2007.

D. NEW PROJECTS: CAMPAIGN

1. Net Debt/Excessive Contribution Cluster:

(a) Regulation 18531.61: Treatment of Debts Outstanding After an Election. Section 85316 restricts a candidate for state elective office from accepting contributions after the date of an election except to pay net debts outstanding from the election. "Net debts outstanding" includes any costs associated with complying with the post-election requirements of the Act. However, neither section 85316 nor regulation 18531.61 mandate that funds permitted to be raised under the net debt rules are actually used to pay the debt. Staff will ask the Commission to consider a requirement that funds raised after an election can only be spent on net debt.

(b) Return of Excess Contributions. Sections 85301-85303 provide for contribution limits for state candidates. In addition, state candidates with no debt cannot accept contributions after an election under the provisions of section 85316. (See regulations 18531.6 and 18531.61.) For purposes of sections 85301-85303, regulation 18531 provides that where contributions either in the aggregate or on their face exceed the contribution limits, they will be deemed not accepted if returned, prior to deposit or negotiation, within 14 days of receipt. Similarly, for purposes of fundraising in violation of section 85316, where a committee has no net debt outstanding, regulation 18531.6(d)(3)(B) and 18531.61(d)(3(B) provide, in relevant part, "Any contribution that exceeds the amount of net debts outstanding shall be treated in the same manner as a contribution in excess of the contribution limits."

When over-the-limit contributions are accepted, violations of sections 85301 - 85303 and 85316 would occur. In addition, regulation 18531 suggests that, in addition, a failure to return the contribution within 14 days is a separate violation of the Act. However, it is unclear whether that would be a correct interpretation of current statutes. No specific provision of the Political Reform Act "requires" the return of contributions, except for section 85700 which requires that contributions be returned to the donor where certain donor information is not provided.

Proposal: This regulatory proposal examines whether there is statutory authority to "require" contributions accepted inconsistent with regulation 18531 to be returned, or whether the regulation merely provides a method to avoid an initial violation under sections 85301-85303 and section 85316, under specified circumstances. Amendments to the regulations would more clearly provide for the applicable interpretation of the statutes, as determined by the Commission. Other minor clarifying changes may also be made.

2. Return of General Election Contributions (Section 85318): The Act establishes separate contribution limits for general and primary elections to the same office. The Act permits the acceptance of general election contributions even prior to the primary election for the same office. However, section 85318 provides, in pertinent part: "If the candidate for elective state office is defeated in the primary election … the general election … funds shall be refunded to the contributors on a pro rata basis *less any expenses* associated with the raising and administration of general election … contributions." (Emphasis added.) The statute provides no guidance as to how the expenses should be allocated (whether to the general election or primary). Staff has applied regulation 18540 by analogy. *(Boling* letter A-06-131.) Regulation 18540 was enacted to regulate the allocation of expenditures for purposes of the separate expenditure limits for general and primary elections. Section 85318 does not relate to the expenditure limits of the Act.

Proposal: *Either* add a cross-reference into regulation 18540 stating that candidates should also use regulation 18540 for allocating expenses under 85318. Or, in the alternative, draft a new regulation which would address all the issues arising under section 85318.

3. General Purpose Committees (Section 82027.5): Section 82027.5 provides:

> "(b) A 'state general purpose committee' is a political party committee, as defined in Section 85205, or a committee to support or oppose candidates or measures voted on in a state election, or in more than one county.
>
> "(c) A 'county general purpose committee' is a committee to support or oppose candidates or measures voted on in only one county, or in more than one jurisdiction within one county.
>
> "(d) A 'city general purpose committee' is a committee to support or oppose candidates or measures voted on in only one city."

Proposal: Enact a regulation to clarify under what circumstances a general purpose committee is considered a "state," "county," or "city" general purpose committee.

4. Retention of Campaign Records: Section 84104 provides: "It shall be the duty of each candidate, treasurer, and elected officer to maintain detailed accounts, records, bills, and receipts necessary to prepare campaign statements, to establish that campaign statements were properly filed, and to otherwise comply with the provisions of this chapter. The detailed accounts, records, bills, and receipts shall be retained by the filer for a period specified by the commission."

Regulation 18401(a)(4) clarifies that maintenance of documents for an expenditure of $25 or more, or a series of payments for a single product or service which totals $25 or more consists of "cancelled checks, wire transfers, credit card charge slips, bills, receipts, invoices, statements, vouchers, and any other documents reflecting obligations incurred by the candidate, elected officer, campaign treasurer, or committee, and disbursements made from any checking or savings account, or any other campaign accounts, in any bank or other financial institution."

However, many banks no longer return cancelled checks but rather allow access to facsimile of the checks on the web or provide copies of checks in response to customer requests. Neither of these would satisfy the regulation language.

Proposal: Allow retention of electronic copies of checks.

5. Reports and Statements; Filing Dates (Regulation 18116): Pursuant to regulation 18116, when a deadline for a statement or report falls on a Saturday, Sunday or official state holiday, the filing deadline shall be extended to the next regular business day. This extension does not apply to late contribution reports required by section 84203, late independent expenditure reports required by section 84204, or notice by the contributor of a late in-kind contribution required by section 84203.3.

Proposal: The Secretary of State's campaign reporting task force recommends that except for the weekend prior to an election, the "next business day" exception should apply to reports required to be filed within 24 hours, including late contribution/late independent expenditure reports, and election cycle reports required under sections 85309 and 85500.

6. Making and Receipt of Contributions (**Regulation 18421.1):** Section 82025 provides that an expenditure is made the earlier of: (a) when the payment is made, or (b) when the goods *or* services are received. However, independent expenditures are generally "made" when the communication is made. In cases where no communication is actually sent, the independent expenditure has not been "made" for reporting purposes.

Proposal: Define when an independent expenditure is "made" for purposes of the Act.

7. Late Contribution Reports (Regulation 18425). In response to a request for verbal advice, staff advised that a nonmonetary contribution (compensated services) was received, for purposes of the 24-hour reporting, on the date the individual's paycheck is

normally issued, and not every time the individual provides $1,000 worth of services (potentially requiring a report every day during the 90-day cycle).

Proposal: Amend the regulation to allow estimated reports during the 90-day election cycle and to allow estimated reports of independent expenditures reported during the same period.

8. Regulation 18402: Committee Names. The Act's campaign disclosure provisions require, under certain circumstances, that committees adhere to naming conventions when naming their committees. Regulation 18402(c) provides:

> "Whenever identification of a committee is required by law, the identification shall include the full name of the committee as required in the statement of organization.
>
> "(1) In the case of a sponsored committee, the statement of organization shall include the name of the committee as provided in 2 Cal. Code Regs. section 18419.
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> "(2) For purposes of Government Code section 84504, in the case of a committee primarily formed to support or oppose a ballot measure, the committee name shall clearly identify the economic or other special interest of the committee's major donors of $50,000 or more.
>
> "(A) If candidates or their controlled committees, as a group or individually are major contributors of $50,000 or more, the primarily formed committee name shall include the controlling candidate's name.
>
> "(B) If the major donors of $50,000 or more share a common employer, the identity of the employer shall also be disclosed in the name of the primarily formed committee."

For example, "[i]n the case of a sponsored committee, the name of the committee shall include the name of its sponsor." (Section 84102(a); see also regulation 18419(b)(1).)

Proposal: Amend the regulation to require that committees controlled by (or primarily formed to support/oppose) *a candidate* include the name of the candidate in the name of the committee.

9. Enforceable Promise to Make a Payment (Regulation 18216): Recently, staff was asked whether a donor could (by contract) promise to provide staff services to a committee and then whether the committee could then promise to contract for other goods or services for the same amount of money. If this were allowable, the requestor could avoid filing daily 90-day election cycle reports and could instead file one report disclosing the "enforceable promise."

Proposal: Amend 18216(b)(7) to clarify that the committee receiving the promise must contract for the goods or services the donor is promising to purchase.

10. Filing Places; Candidates Holding One Office and Running for Another (Section 84215): Section 84215(d) requires county officeholders and candidates for county offices to file campaign statements in the county. Section 84215(e) requires city officeholders and candidates for city offices to file campaign statements in the city. The Commission has advised that an elected officeholder who runs for an office in a different jurisdiction must file all campaign statements required for both offices in both jurisdictions. (*Barrett* Advice Letter, No. A-88-150.) In other words, if an elected state officeholder controls two committees, one established for a state candidacy and one established for a local candidacy, both committees must file on the state filing schedule as well as the local filing schedule and with all of the appropriate state and local filing officials.

Proposal: Codify *Barrett* Advice Letter, No. A-88-150, stating that candidates must file original reports where they hold office as well as where they are seeking office.

11. "Street Address" (Regulation 18421.2): Regulation 18421.2 provides that the term "street address" for purposes of the campaign reporting rules means the street name, building number, and city, state, and zip code." Contributions in the amount of $100 or more shall be itemized on campaign statements. Many people on active duty in the military do not have a "street address," as that term is defined. The only "address" available to these individuals may be the A.P.O. (Army and Air Force Post Office) or F.P.O. (Fleet Post Office (Navy)) address assigned by the military. As a result, a filer who receives contributions from military personnel may not be able to disclose the contribution as required by law.

Proposal: Regulation 18421.2 should be amended to include A.P.O. and F.P.O. addresses for military personnel. Other clarifying changes may also been made.

E. NEW PROJECTS: CONFLICT-OF-INTEREST DISQUALIFICATION AND DISCLOSURE

1. Disclosure Cluster

a. Regulation 18740 (Privilege): Regulation 18740 is entitled "Privileged Information: Statement of Economic Interests." Notwithstanding its broad description, this regulation is very narrowly drafted, permitting an official to omit from his or her Form 700 only "the name of a person who paid fees or made payments to a business entity if disclosure of the person's name would violate a legally recognized privilege under California law."

There have been occasions over the years where staff has found that disclosure of the location of real property owned by a public official would create physical danger, and yet on these occasions, the officials could not utilize regulation 18740. For example, one situation involved a judge who, due to credible threats of retaliation by members of criminal gangs, wished to avoid disclosure of his interest in a residence occupied by his parents.

More recently, we were contacted by a newly-elected planning commissioner who had for many years run a domestic violence shelter and two "safe houses" whose locations were kept confidential to protect victims of domestic violence. Penal Code § 273.7 makes it a misdemeanor to maliciously publish or disclose the location of such a "safe house." Yet, a literal interpretation of the Act required disclosure.

Proposal: Regulation 18740 should be amended to allow an exemption from disclosure of real property locations when such disclosure presents a credible threat of physical violence, whether to the official or to other persons at the location. Depending on research into the practical problems encountered by public officials, the regulation might be limited to certain kinds of officials, such as judicial officers, law enforcement personnel and the owners of domestic violence shelters, or it could be more broadly drafted as authority for a general "physical threat" exemption.

b. Parcel Disclosure: Regulation 18730 governs the provisions of the conflict of interest codes, including the manner of reporting economic interests on a Statement of Economic Interests (Form 700). Specifically, regulation 18730(b)(7)(A)(3) governs the manner of reporting real property interests, and allows the address *or other precise location of the real property* to be disclosed on the Form 700. This provision has been construed to allow reporting an assessor's parcel number instead of a street address.

Generally, the real property disclosure requirement is meant to provide the public with the exact location of the filer's real property interests as a means to determine whether the filer may have a conflict of interest in making a particular governmental decision related to the property. While disclosure of an assessor's parcel number technically reveals the precise location of a property, a parcel number listed on the Form 700 could instead be used as a means of concealing the property's location from members of the public who do not have the knowledge or means to take the next steps necessary to determine the location of the property. This could easily thwart the intended purpose of the disclosure requirement.

The problem with using a parcel number of a property instead of a street address is that it can make it very difficult for the public to clearly identify the location of the property. A member of the public would have to go to the County Assessor's office to look up the parcel number in order to determine the exact location of the property, when a quick look at a street address reported on the Form 700, if one existed, would have provided the desired information. The need to go to this length to determine the location

of a property, when a street address is available, would obviate the purpose of the disclosure requirement.

Filers choose to report the parcel number for safety reasons (see discussion of regulation 18740, above), but the issue of safety is being dealt with in other ways, such as by the Act's exemption for the disclosure of personal residences, and the proposed amendment to 18740, which would deal with danger to the official's immediate family or others.

Proposal: The Enforcement Division staff therefore proposes an amendment to regulation 18730(b)(7)(A)(3), to clarify that the property address of a filer's real property interest must be disclosed, if one exists. If there is no street address, another method which accurately reflects the precise location of the real property will suffice. Thus, an alternate method indicating the precise location of the property could be used only when a street address is not available. This change will allow for full disclosure of real property interests and will provide meaningful disclosure of those interests to the members of the public. This change will also allow decisions made, participated in, or influenced by a public official, which are related to his or her property interests, to be more easily identified.

2. Gifts to an Agency (Regulation 18944.2): A payment is deemed to be a gift to a public agency, and not a gift to a public official, if all of the following requirements are met:

(1) *The agency receives and controls the payment.*

(2) The payment is used for official agency business.

(3) The agency, in its sole discretion, determines the specific official or officials who shall use the payment.

(4) The agency memorializes the payment in a written public record.

Proposal: Staff proposes amending regulation 18944.2(a)(1) to allow the donor to make payments directly to an airline or hotel, rather than requiring that the agency receive the payment. In cases where the latter three factors are not in dispute (i.e., the trip is for agency business, the agency selected the employee to go and memorializes all of these steps in a public record), the payment may still be a gift to the assigned public employee where the donor chooses to pay a bill directly (to a hotel or for plane tickets). Staff would like to explore modification or elimination of the first factor.

3. Gifts of Travel (Section 89506): The vast majority of travel payments to a public official from a third party are classified as gifts under the Act. In some cases, the payment may be considered income. In either case, the official must disclose the amounts on his or her annual Statement of Economic Interests (Form 700). However, various

exceptions to the gift limit may apply if the official travels to give a speech, or travels on behalf of a government agency or nonprofit organization for a governmental purpose.

An official's necessary lodging and "subsistence," including meals and beverages, provided *directly in connection* with an event at which the official gives a speech or participates in a panel or seminar are neither subject to gift limits nor reportable. (Regulation 18950.3.) Payments that qualify under this regulation are not subject to gift limits and are not reportable on your Statement of Economic Interests. "*Meals and beverages, provided directly in connection with an event"* which qualify under this exception have been construed to be limited to those provided on the day of the speech. What constitutes "necessary accommodations" within this exception are generally limited to the day of the speech, but may include the day before or after, if necessary due to travel arrangements.

In contrast, where the travel is in connection with a speech given by the filer and is reasonably related to a legislative or governmental purpose or a public policy issue, and the travel is within the United States, related lodging and subsistence expenses *on the day preceding the speech, the day of the speech, and the day after it* are not limited. (Reg. 18950.1(a).) These payments are not limited, but they are reportable (unless covered by regulation 18950.3) and may give rise to disqualification.

Proposal: The different rules regarding travel and lodging and subsistence in connection with a speech have proven to be confusing to filers. Staff will propose amending the gift and honoraria regulations to make them more consistent with section 89506.

F. RESERVE PROJECTS NOT YET CALENDARED

1. Member Communications (Commissioner Huguenin's Proposal): Regulation 18215(c)(9) was last adopted in 1997, prior to the voters' adoption of Proposition 34. It excludes from "contribution," the cost of those internal or membership communications constituting a "regularly published newsletter or periodical." As part of the adoption of Proposition 34, section 85312 provides a new and statutory basis for the exclusion from "contribution," of internal or membership communications. By regulation, that exception has been construed to cover any newsletter, letter, flyer or like material, written or spoken. (Regulation 18531.7) This post-Proposition 34 exclusion is broader than the previously exclusion existing in regulation 18215(c)(9).

However, regulation 18531.7, in interpreting section 85312, provides at subdivision (a) that "payments for communications to members" includes both payments by the organization itself and payments by its sponsored committee for member communications. Commission consideration of regulation 18531.7 at several Commission meetings included discussion regarding the implications of section 85312 to ordinary reporting by recipient committees. Ultimately, the Commission decided that payments made by a recipient committee, which is already subject to the campaign reporting requirements of the Act,

should continue to be reportable in accordance with the requirements of section 84211 despite the existence of section 85312 and regulation 18531.7. (See *Olson* Advice Letter, No. I-05-239, see attachment 3.) However, the narrower exception in regulation 18215(c)(9) may still apply.

Proposal: Incorporate into regulation 18215(c)(9), the broader concept of internal or membership communications from regulation 18531.7.

2. Commission Review of Advice Letters Nos. I-06-138 and I-06-071 or, as an Alternative to Further Informal Advice, Amendment of Regulation 18215(c)(16) and/or Consideration of Proposed Regulation 18530.10. (Chuck Bell Proposal.): The advice letters at issue here (*Bell Advice Letters* Nos. I-06-138 and I-06-071) responded to inquiries from Charles H. Bell, Jr. on the circumstances under which a sponsor's payments to a sponsored committee would be considered "contributions" to that committee, subject as such to the limits of section 85303(a). Specifically, Mr. Bell probed the boundaries between payments "for the establishment and administration of a sponsored committee" – exempt from definition as contributions under regulation 18215(c)(16) – versus payments made to support committee fundraising activities. The latter payments are not exempt from the definition of "contribution" because they have not been regarded as costs of "establishment or administration" under regulation 18215(c)(16).

As noted in the first advice letter (No. I-06-071), when regulation 18215(c)(16) was originally before the Commission for adoption, Mr. Bell proposed a draft amendment specifically exempting from the Act's definition of "contribution" the sponsor's payments of a sponsored committee's fundraising costs. The Commission declined to insert such an exemption in the language of regulation 18215(c)(16) in December, 1996 and again in January, 1997.

In his more recent requests, Mr. Bell urged staff to read into regulation 18215(c)(16) and section 85303(a) a distinction between "direct" and "indirect" payments to a committee which, as a practical matter, would define payments made "for the purpose of making contributions to candidates for elective state office," which are limited by section 85303(a). Staff does not believe that either regulation 18215(c) or section 85303(a) provides authority for such advice, especially when the inquiry is presented on purely hypothetical "facts," and therefore recommends that the Commission take no action to modify these advice letters.

Recommendation: If the Commission wishes to consider an exemption of fundraising payments from the limits of section 85303(a), staff recommends that the Commission consider adding a regulatory project to the calendar for next year. Regulatory language such as that provided by Mr. Bell in his latest correspondence (see attachment 4) will be considered by staff. However, staff would hold an interested persons' meeting prior to presenting any regulatory language to the Commission and further examine the statutory parameters of the request.

G. OTHER CURRENT ISSUES OF NOTE THAT MAY NEED REGULATORY ACTION BUT ARE NOT YET CALENDARED

1. Pledges as Campaign Contributions: Under existing law, an enforceable written promise to contribute a specified sum of money is considered to be a contribution as of the date the promise is made, and is reportable in the same manner as any contribution of a like amount on the same date. However, regulation 18216 expressly excludes campaign pledges from classification as "enforceable" promises for timing and reporting purposes.

The Orange County Register, in an August 30, 2006 article, criticized the current definitions. The article, titles "Pledging muddles finance picture; Legislators accept promises instead of cash, confounding watchdogs who want to know who is trying to influence bills as the session winds down" stated:

> "The state's campaign disclosure regulations only require candidates to report the day when a contribution is received, not the day when the promise is made.
>
> The difference is important, campaign finance watchdogs say....
>
> Does the annual rush of fundraisers influence the final votes? Pledging makes it impossible to know.
>
> 'To follow the trail before, you would see the money change hands. That was your sign to see if a (vote) was taken to benefit the donor. Now it can happen after the fact,' said Derek Cressman, executive director of TheRestofUs.Org, a campaign finance monitor.
>
> It's unknown how widespread pledging is, but an Orange County Register review of campaign disclosure forms found 14 examples of sitting lawmakers who scheduled $1,000-a-ticket or more fundraisers this month but didn't report receiving any new contributions the next day. State law says that candidates this close to the Nov. 7 election have to report contributions of $1,000 or more to the secretary of state within 24 hours of receipt.
>
> The Register found 35 cases where lawmakers reported at least one contribution on the day of a fundraiser or the day following, with the most being seven contributions the next day. Lawmakers who aren't running for election in November but hold fundraisers now aren't required to report contributions within 24 hours."

The Commission may wish to consider a review and possible regulatory action in the area of pledges.

2. Section 85310(c) and Whether Opposing Advertisements Could Under the Limits. Section 85310 regulates communications (under specified circumstances) that identify state candidates, but do not expressly advocate the candidate's election. The statute requires the filing of an online or electronic report. In addition, subdivision (c) provides:

> "(c) Any payment received by a person who makes a communication described in subdivision (a) is subject to the limits specified in subdivision (b) of Section 85303 if the communication is made at the behest of the clearly identified candidate."

Section 85303(b) provides in pertinent part:

> "(b) A person may not make to any political party committee, and a political party committee may not accept, any contribution totaling more than twenty-five thousand dollars ($25,000) per calendar year for the purpose of making contributions for the support or defeat of candidates for elective state office."

The question has been asked whether the limit in section 85303(b) applies, through section 85310(c), where a candidate behests the expenditure of funds on a communication that features (negatively) the candidates opponent. In other words, if Candidate Adam asks PAC to pay for a communication (that otherwise meets the requirements of section 85310) critical of Candidate Barstow (Adam's opponent), would all the restrictions in section 85310 apply; or, would the restrictions only apply where the behesting candidate, candidate Adams, is featured?

Recommendation: Staff believes that both these endeavors could prove time consuming. If the Commission desires to see these two projects on the 2007 calendar, staff proposes removal of other projects in order to free up resources.

Attachment 1: Chart
Attachment 2: Senate Bill 145 (Ch. 624, stats 2006.)
Attachment 3: *Olson* Advice Letter, No. I-05-239
Attachment 4: Bell Letter